

IN THE COURT OF APPEALS OF IOWA

No. 1-335 / 91-477

FILED

OCT 29 1991

CLERK SUPREME COURT

IN THE INTEREST OF L.S., N.S. AND A.S., Minor Children,

L.H. and G.S., Mother and Father, and O.H., Maternal
Grandmother-Intervenor,

Appellants.

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Appeal from the Iowa District Court for Black Hawk
County Stephen C. Clarke, Juvenile Referee.

The parents and maternal grandmother of three children
appeal the juvenile court order which terminated the
parents' parental rights. **REVERSED AND REMANDED.**

Carter Stevens of Beecher, Rathert, Roberts, Field,
Fister, Walker & Morris, Waterloo, for appellant mother.

Craig Ament, Cedar Falls, for appellant father.

Paul Demro of Clark, Butler, Walsh & McGivern,
Waterloo, for appellant maternal grandmother.

Sara Kersenbrock, Waterloo, guardian ad litem for
children.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Barbara E.B. Galloway, Assistant Attorney General, for appellee.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

This appeal from a trial court order terminating parental rights addresses two issues. The issues are whether there is clear and convincing evidence supporting the trial court's decision to terminate appellants' parents' parental rights to three children and whether the trial court correctly decided to deny the maternal grandmother custody of the children.

We find custody should have been placed with the grandmother. We determine it is not in the best interest of the children to cut off financial support from their parents. We, therefore, find it unnecessary to address whether there is clear and convincing evidence supporting termination. We reverse and remand.

The three children are L.S., a male born April 18, 1983, N.S., a female born July 21, 1984, and A.S., a female born February 3, 1986.

The Department of Human Services commenced its first child abuse investigation concerning this family in October 1986. At that time, the parents were married and living together. The complaint was the parents were abusing alcohol and could not care for their children. The department found the family home was unsanitary, and the children did not have adequate food. The father was hospitalized for alcoholism, and at the request of the mother, the father's aunt took the children temporarily.

The father suggested the children stay with the maternal grandmother.

On November 14, 1986, a petition was filed alleging the children were children in need of assistance because the parents were likely to abuse or neglect the children, and the children were likely to suffer harmful effects because of their parents' failure to supervise them. On December 8, 1986, the children were found to be children in need of assistance. A disposition hearing was held on February 12, 1987. The court ordered the custody of the children remain with their parents, subject to protective supervision by the Department of Human Services. The parents were ordered to be evaluated and participate in counseling. Family therapy was provided. The children were to have protective day care. Homemaker services were provided.

For the next eighteen months the children remained in their parental home. The parents did not participate in all the ordered services. They sought dismissal of the child in need of assistance proceeding.

In June 1988 the mother left the family home. The day care provider reported to the department the children arrived at the day care center hungry and wearing dirty or inappropriate clothes. The department visited the family home and found it dirty and smelling of urine. At an August 8, 1988 review hearing, the court determined because the home and children were dirty, and the children were not

properly clothed and fed, additional protective orders should issue. The court determined the children would remain in the custody of the father under the protective supervision of the department, with homemaker services at least once a week and the Public Health Nurse to provide services at least twice a month. Protective day care was continued, and the father was to complete a parenting class.

In September 1988 the department received a child abuse referral. The department's investigator determined, in his opinion, the father had physically abused his son.

At the end of February, the father, who was intoxicated, passed out at the son's elementary school. Later that day, the father was found at home with the younger children. He was too intoxicated to care for them. A juvenile court referee apparently gave verbal direction to remove the children from their home, and they were put in foster care.

On October 4, 1988, the State filed a motion to modify the dispositional order placing the children with the department for foster care placement. On October 10, 1988, the juvenile court held a hearing on the temporary removal and the motion to modify the dispositional order. The father attended the hearing, but the mother did not. It was stipulated to continue the temporary removal, and to reschedule the motion to modify the dispositional order for a later date.

After the three children were removed from the custody of their parents, they made statements indicating they had been sexually abused by their father and mother. A department investigator came to the conclusion the children had been sexually abused by both parents.

On December 22, 1988, the juvenile court heard the motion to modify the dispositional order. The father appeared, the mother did not. The father agreed to be evaluated, but denied the need for substance abuse treatment. The court ordered custody of the three children to be placed with the department for family foster care placement. The court ordered both parents to undergo substance abuse and psychiatric evaluations and to follow all treatment recommendations.

Prior to March 14, 1989, the parents' marriage was dissolved, and the mother remarried. There is no evidence either parent had a substance abuse or psychiatric evaluation.

Since initial placement on September 30, 1988, the three children have remained in foster care. L.S. has been in four foster homes; N.S. has been in five foster homes; and A.S. has been in three foster homes. The parents have not performed well since removal.

We first address whether the children should have been placed with O.H., appellant maternal grandmother. Upon terminating the parental rights of a child's natural or

adoptive parents, the court shall transfer the guardianship and custody of the child to one of the following:

- A. The Department of Human Services;
- B. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise licensed to receive and provide care for the child;
- C. A relative or other suitable person.

Iowa Code Section 232.117(3) (1991). In reviewing child custody issues, the court's first and foremost consideration is what will be in the best interest of the child. Precedent is of little value in child custody matters, and the court's decision must be based largely on the particular facts of each case. See In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). The major concern is to place the children in an environment most likely to bring the children to a healthy physical, mental and social maturity. See Lambert v. Everist, 418 N.W.2d 40, 42 (Iowa 1988). The desirability of maintaining an identity with the children's natural family is one factor to be considered in determining where a child should be placed under Iowa Code section 232.117(3). See In re J.R. and S.R., 315 N.W.2d 750, 753 (Iowa 1982). Siblings should not be separated without good and compelling reasons. See In re A.M.S., 419 N.W.2d 723, 734 (Iowa 1988).

These are difficult children. They have numerous problems, and were clearly mistreated at the hands of their parents. Their problems have continued in their journey through a series of foster homes in the years spent in

State care prior to the termination hearing in October 1990.

For the first foster care placement, N.S. and A.S. were placed in the home of foster mother N.S., and L.S. was placed with P.C. All three children were in the N.S. foster home during the first two months of 1989. Foster mother N.S. requested the child N.S. be removed because of negative behavior, which included physical aggression toward other children. The foster mother also reported because of the number of children in her home, she was not able to adequately supervise the child. The child N.S. was placed in the Q. foster home during March 1989. Two months later the Q. family requested N.S. be removed from their home because of her behavior. In May 1989 foster mother N.S. requested L.S. and A.S. be removed from her home because she was not renewing her foster care license on June 1, 1989, due to health problems. During that time the children had five caseworkers. L.S., a male born March 18, 1983, was in his fourth foster home. N.S., a female born July 21, 1984, was in her fifth foster home. A.S., a female born February 3, 1986, was in her third foster home.

The termination petition was filed on May 10, 1990. On July 16, 1990, the grandmother filed a motion to intervene. She recited she was custodian of the younger brother of these three children, and she sought custody and guardianship. A study of her home followed. A hearing was held. The trial court denied her request, finding:

These very needy children will need substantial involvement of mental health professionals and community resources in order to have any kind of chance at all to lead productive lives in the future. Notwithstanding her long residence in this community, O.H. shows a marked isolation from the community and its resources. She sought no assistance when she encountered school and behavior problems with her own children. The result was that none of them completed a formal high school education, and the three girls were raising children while they themselves were children. Unfortunately, nothing has changed in her twenty-nine years of parenting. O.H. continues to be relatively isolated and apparently has no acquaintance with programs such as the Boys/Girls Club which could have been of assistance to her even before now with respect to the child D.H.

Although adoption can never be guaranteed, placing the children at this time in long-term foster care or in the home of O.H. would surely leave them in a parentless limbo with little probability of permanence.

O.H. is a remarkable woman. O.H. acknowledges love for her children but had difficulties when they were in their teenage years. Three of her children obtained Graduate Equivalency Degrees. O.H. was born in Mississippi in 1936, one of fifteen children. Her father was a farmer, and her mother was a homemaker. She recalls her childhood as peaceful and her family as loving. She attended school until the eighth grade in Mississippi. She was married at age seventeen and moved with her husband to Waterloo in 1959.

O.H. and her husband have four children. The oldest child is married and has a job at the IBP plant in Waterloo, Iowa. He and his wife have a two-year-old son

who she cares for while the child's parents work. Her oldest daughter is divorced and lives in Des Moines. Her third child is twenty-six and the mother of these three children. Her youngest child is seventeen; she has a child and is finishing her education at the success center in Waterloo. She and her son live with O.H.

After her marriage was dissolved, O.H. cared for her children with aid to dependent family benefits. She has been a homemaker and mother her entire adult life. She also has cared for her father. Her mother died in 1979. In 1987, her father suffered an incapacitating stroke, and she brought her father to Waterloo from Mississippi. Her father lived in her home, and she took care of him for three years. He was an invalid who required twenty-four hour care. O.H. was determined not to allow him to be placed in a nursing home. She stated she coped with the stress by praying for strength to get through each day. Her father died in January 1990.

Five of O.H.'s brothers and sisters are still living. She has two brothers in Waterloo and a sister and brother in Milwaukee. O.H. has contact with her brothers in Waterloo on a regular basis, and her relationship with them is relatively good.

Her marriage was dissolved in 1968. Her former husband lives in Waterloo. They have a satisfactory relationship, and he visits in their home.

O.H.'s physical health is good. Her home is neat, clean and adequate. The persons in her home are adequately dressed. She maintains close ties to her children and family. The State admits she can provide clean shelter, clothing and food.

The State points to the children's serious problems and argues the grandmother is a passive caretaker. The State supports its position by evidence O.H. has made no effort to legally obtain custody of the half brother of these children in her care. The State also criticized her for her failure to use community services. We recognize the children have problems that will require outside help. The grandmother does not have a high level of sophistication. She will need help, guidance and direction in using outside resources to assist her in the children's care. We are not impressed with the State's argument that this woman's failure to obtain custody of these children's half brother and her failure to have a will are relevant to her ability to parent these children.

At the point of trial, the grandmother was the only person asking to take all three children. She can devote full time to parenting. She has an adequate home. She can meet the children's physical needs. She will need help, as any custodian would, in addressing the children's special needs. She loves the children and intends to maintain the natural family identity. She has numerous life

experiences. O.H. has no criminal record. Her children have no criminal or juvenile involvement, other than one public intoxication charge against one son. Her children received their equivalency degree of a high school diploma.

If she assumes custody, it will maintain the family unity, consistency, and integrity for the three children. These children will be reunited with their half brother, D.H.

While the State introduced evidence the children were adoptable, the State history of finding placements for three children does not support a finding they are readily placeable. There is no assurance the children will ever be placed together. These children have had no consistency and stability since removal from their parents. They need someone who will love and nurture them and provide a stable figure. Their grandmother appears to be their best hope. O.H. will need outside services to assist her in caring for her grandchildren.

The last question is whether, with the grandmother receiving custody, the rights of the parents should be terminated. Termination of the parents' parental rights would, under the current statutes of the Iowa law, appear to cut off the parents' support obligation to these children. But see In re Marriage of O'Connell, 80 Cal. App. 3d 849, 852, 146 Cal. Rptr. 26, 28 (1978); Note, Termination of Parental Rights and the Child Support

Obligation--In re Marriage of O'Connell, 12 U.C. Davis L. Rev. 632, 638-44 (1979). (California Court held parents responsible for support following termination.) The parents should continue to have financial responsibility for the children. We will not terminate their parental rights and possibly discharge this responsibility. An order establishing their level of support should be entered. We reverse the order terminating parental rights. We do not retain jurisdiction. We direct the children be placed in the permanent foster care of O.H. We remand to the juvenile referee to hear evidence and order such reasonable services as are necessary to assist O.H. in parenting these children. We further direct that the court hear evidence and order the parents to pay support as directed by the child support guidelines.

REVERSED AND REMANDED.